

FACTSHEET

TITLE: ANNEXATION NO. 06008, requested by James and Jennifer Heck, to annex approximately 3.00 acres, more or less, generally located northeast of the intersection of South 80th Street and Amber Hill Road (8000 S. 80th Street).

STAFF RECOMMENDATION: Denial

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 05/24/06
Administrative Action: 05/24/06

RECOMMENDATION: Denial (9-0: Esseks, Cornelius, Carroll, Taylor, Sunderman, Strand, Larson, Krieser and Carlson voting 'yes').

FINDINGS OF FACT:

1. This is a request to annex approximately 3.0 acres of AGR zoned land located in Amber Hill Estates northeast of the intersection of South 80th Street and Amber Hill Road.
2. The "*Analysis*" as set forth on p.3-5 of the staff report noted that the subject property is included in the newly created road improvement district that covers Clarendon Hills, Portsche Heights and Amber Hill Estates. The district was formed for the purpose of paving the gravel roads with asphalt to County standards. Annexation of only a portion of the land included in a road improvement district has apparently not been done by the City of Lincoln before, and the implications of such an annexation upon both the property owner and the City were not clear initially. By the time of the hearing, staff had concluded that:
 - a) if this property was annexed before a paving contract was approved for the road improvement district, the sections of 80th Street and Amber Hill Road would become City streets and might remain unpaved unless and until this owner subdivided and improved these streets;
 - b) the construction of the two street segments is likely to be cost prohibitive to this owner without the participation of other owners across these streets; and
 - c) if the paving contract is issued before annexation is effective, the City could be liable to assume a part of the district's road improvement costs.
3. At the public hearing before the Planning Commission, the staff recommended that the proposed annexation be denied; however, if approved, an annexation agreement should be negotiated to address the issue of street improvement costs.
4. The minutes of the public hearing before the Planning Commission are found on p.6-9. The staff presentation is found on p.6-7. The applicant's testimony is found on p.7-9 (also see p.13). The applicant did not request to have the annexation request deferred. There was no testimony in opposition.
5. On May 24, 2006, the Planning Commission voted 9-0 to recommend denial.
6. Due to a recommendation of denial from the Planning Commission, an annexation agreement has not been negotiated; however, if the City Council votes to approve the annexation, it should be conditioned on an annexation agreement to address the street improvement issues.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: June 5, 2006

REVIEWED BY: _____

DATE: June 5, 2006

REFERENCE NUMBER: FS\CC\2006\ANNEX.06008

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for May 24, 2006 PLANNING COMMISSION MEETING

PROJECT #: Annexation #06008

PROPOSAL: A request from the owners to annex Lot 1, Block 1, Amber Hill Estates.

LOCATION: Northeast of the intersection of South 80th Street and Amber Hill Road.

LAND AREA: Approximately three acres.

CONCLUSION: The subject property is included in the newly created road improvement district that covers Clarendon Hills, Portsche Heights and Amber Hill Estates. The district was formed for the purpose of paving the gravel roads with asphalt to County standards. Annexation of only a portion of the land included in a road improvement district has apparently not been done by the City of Lincoln before, and the implications of such an annexation are not fully known. Staff is attempting to determine the impact upon both the property owner and the City, and has informed the owner of this fact. Until the outstanding questions can be answered, it is not possible to find that the request complies with the City's annexation policy and annexation is premature.

<u>RECOMMENDATION:</u>	Deferral
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GENERAL INFORMATION:

LEGAL DESCRIPTION: Lot 1, Block 1, Amber Hill Estates.

EXISTING ZONING: AGR Agricultural Residential

SURROUNDING LAND USE AND ZONING:

North:	Vacant (the Grand Terrace CUP was approved on 3/15/06)	AG (R-3 pending)
South:	Single-family Residential	AGR
East:	Single-family Residential	AGR
West:	Single-family Residential	AGR

EXISTING LAND USE: Single-family Residential

COMPREHENSIVE PLAN SPECIFICATIONS:

Page F23 - The Land Use Map designates low-density residential uses for this property.

Page F154 - The City's annexation policy, also stated in paragraph #1 below.

HISTORY:

- March 15, 2006** SP#06001 for the Grand Terrace CUP was approved for the land immediately adjacent to the north of this site. The associated annexation and change of zone to R-3 are in the process of moving forward for consideration by the City Council.
- April 13, 1987** The final plat of Amber Hill Estates was approved by the City Council.
- August 15, 1986** The preliminary plat of Amber Hill Estates was approved by the City Council.

UTILITIES & SERVICES:

- A. **Sanitary Sewer:** Sanitary sewer is planned to be extended from the south side of Highway 2 south to serve the proposed Grand Terrace residential development adjacent to this property to the north. Based upon existing topography, it appears the Heck residence at the northwest corner of Lot 1 can be served by that sanitary sewer. However, it also appears that the approximately south two-thirds of the lot cannot be served by it. That part of the lot must be served by a future sanitary sewer serving the drainage basin to the south.
- B. **Water:** Water could be extended from the proposed water service planned in Grand Terrace.
- C. **Roads:** South 80th Street and Amber Hill Road adjacent to the subject property are surfaced with gravel. The purpose of the newly-formed road improvement district was to pave the streets in this area, including South 80th Street and Amber Hill Road, with asphalt to County rural standards. Any areas within the City must pave streets with concrete including curb and gutter and sidewalks when land is subdivided.
- D. **Fire/Police Protection:** After annexation, police and fire protection become the responsibility of the City of Lincoln. The nearest fire stations are at South 48th & Claire Avenue and at South 84th and South Streets.

ANALYSIS:

1. Annexation policy:
- ! Land which is remote from the limits of the City of Lincoln will not be annexed; land which is contiguous and generally urban in character may be annexed; and land which is engulfed by the City should be annexed.
 - ! Annexation generally implies the opportunity to access all City services. Voluntary annexation agreements may limit or otherwise outline the phasing, timing or installation of utility services (i.e., water, sanitary sewer) and may include specific or general plans for the private financing of improvements to the infrastructure supporting or contributing to the land uses in the annexed area.

! Plans for the provision of services within the areas considered for annexation should be carefully coordinated with the Capital Improvements Program of the city and the county."

2. During the review of the Grand Terrace CUP, staff noted that the development must be served by paved roads. Right-in-right-out access to South 84th Street was approved as part of the development, as well as a phasing plan that identified which surrounding gravel roads would be improved in conjunction with those phases.
3. It was also noted during the review that any areas annexed by the City are required to pave streets with concrete including curbs, gutter, and sidewalks at the time of final plat. However, if streets are paved with asphalt to County standards prior to annexation, the City is required to accept them "as-is".
4. The Clarendon Hills, Portsche Heights, and Amber Hill Estates neighborhoods voted to petition the County Board to create a road improvement district for the purpose of paving the roads in those developments with asphalt to County standards. The creation of the district was approved by the Board in 2005, and the District has elected a Board of Trustees which is in the process of negotiating a contract to improve the roads. After the roads are paved, the Trustees will convene to assess the affected properties for the purpose of paying off the costs of improvements. Those costs include both construction (paving, grading, etc.) and soft (engineering and attorney fees, etc.).
5. State Statutes treat road improvement districts similar to sanitary improvement districts (SID) in that once legally formed, both have the ability to contract for services and assess members for the costs of those services.
6. It is the opinion of staff that if the District assesses members prior to annexation, the City can be liable for those costs. It appears clear that, as with an SID, the City assumes both the assets and the liability for all debts when the entire district is annexed. However, in the case of this request which proposes annexation of a portion of the district, the answer is not clear. It is possible that even after annexation, the District will have the authority to construct improvements in areas within the district boundaries prior to annexation and assess for the improvements. It is not known whether the City or the land owner would be responsible for those costs. This is a circumstance the City has not faced before, and the implications are not fully known.
7. These questions are being considered by City and County attorneys and have not yet been answered. The applicant was notified of this, and was encouraged to delay the public hearing to allow time for outstanding issues to be resolved. As of the writing of this report the applicant has not responded.
8. The City does not intend to become liable for asphalt paving costs, and staff will recommend that an annexation agreement be required that includes a condition that the owners will be responsible for those costs. The applicants need to be aware that they may be liable for both asphalt paving, and then concrete with curb, gutter and sidewalks at the time of final plat should they ever subdivide their land.

9. The annexation policy infers that all municipal services can be provided to lands being annexed. A significant portion of the Heck property cannot be served by the sanitary sewer being extended to the Grand Terrace development, and an annexation agreement will be required that states that service cannot be provided until additional improvements to the sewer system have been constructed to serve this area.
10. There are unresolved issues, and as a result it is not possible for staff to find that this request complies with the annexation policy. While the recommendation is for deferral, if the City Council approves this request it should be subject to the following condition.

CONDITIONS OF APPROVAL

1. The owners enter into an annexation agreement with the City.

Prepared by:

Brian Will, 441-6362, bwill@lincoln.ne.gov
Planner
May 11, 2006

**APPLICANT/
OWNER/
CONTACT:**

James and Jennifer Heck
8000 South 80th Street
Lincoln, NE 68516
402.730.0466

ANNEXATION NO. 06008

PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 24, 2006

Members present: Esseks, Cornelius, Carroll, Taylor, Sunderman, Strand, Larson, Krieser and Carlson.

Staff recommendation: Deferral

Ex Parte Communications: None

Staff presentation: Brian Will of Planning staff explained that this annexation request was submitted by James and Jennifer Heck and the property is bounded by S. 84th Street, Hwy 2, Amber Hill Road, and S. 80th Street. The staff is recommending that this application be deferred because there were some questions raised during the review to which the answers are not yet clear. A road improvement district has been formed in this area including the neighborhoods to the south as well as to the east. The Grand Terrace Community Unit Plan was recently approved just to the north of the Heck property. Those surrounding neighborhoods have formed the road improvement district for the purpose of paving some of the gravel roads in this area. The annexation of one lot within that road improvement district raises the question as to whether this property would be responsible for their share of those paving costs if the paving district paved those roads and the property was subsequently annexed by the city. The staff needs additional time to consider the issues and questions. At this point in time, it is the staff's understanding that if the Heck property is annexed and the road improvement district moves forward to pave these roads, there is a good possibility that the Hecks will be responsible for their share of those paving improvements. The city would request that this annexation be subject to an annexation agreement and that would be one of the terms of the agreement.

Esseks noted that the staff report also mentions the possibility that by going ahead and paving to county standards, these folks would escape city standards. Will responded indicating that normally, once within the city limits, any further subdivision would require urban paving standards. One of the reasons the road improvement district was formed was to get the streets paved so that if they were annexed those streets would be allowed to remain and not be required to meet urban standards. Esseks does not believe this appears to be in the interest of the city. He wondered whether the annexation agreement negotiation process would obviate this, or does state law for the special districts take precedent? Will explained that the city does not now have any way to require that the larger area outside the city limits be paved to urban standards. If the Heck property is annexed and they then subdivide, they will be required to meet the urban standards. The relief is to ask for a waiver of those requirements from the City Council, and Will believes that would occur. There are other areas within the city that have substandard roads that have been allowed to remain.

Esseks wondered whether the road improvement district could use that legal status to obviate the requirement to put in concrete curb and gutter, etc. Will indicated that to be part of the question. If the city were to annex the entire road improvement district, that district goes away and the city absorbs both the liabilities and assets of that district. The question is less clear when we annex just a portion. That is a concern both of the city and the property owner asking to be annexed.

Strand inquired whether the road to the south, Amber Hill Road, is going to be a County road. Will stated that it is a county road that was in a subdivision approved many years ago. There is an agreement with Grand Terrace and the road improvement district that a certain amount would be paid to the district for purpose of improving those roads. The Hecks are a part of that road improvement district.

Rick Peo of the City Law Department clarified that if the city would annex the Heck property, then the portion of Amber Hill Road abutting that property and 80th Street automatically become city streets. Because those two roads are now located in a road improvement district, and if we annex the Heck property, we have a duty under state law to reach an equitable division of assets and liabilities of the road improvement district for taking part of the property out of their tax base. In this case, if we annexed today, prior to that road improvement district entering into a contract to pave the road, then we would be annexing the property without any liabilities but we would be splitting that road improvement district. This would create a gap. And then the questions becomes, does the city have to work out an agreement with the road improvement district to pay for part of Amber Hill Road? Does it sit in abeyance? Is it part of an annexation agreement to require Hecks to come to agreement with the road improvement district? Do we pave, curb and gutter that little section? If the road got built first and then we annexed the property, the City would only look to the Hecks to pay whatever assessment they would previously have paid. If the property is further subdivided, they might ask for a waiver of curb and gutter, or pavement, etc. It is a situation where we do not know the best remedy and how to proceed.

Strand noted that the staff is recommending deferral; however, she recalled that the City Attorney does not like the Commission to defer applications if the request for deferral is not by the applicant. Peo agreed that he does not believe the Commission should hold up the applicant's request. The Commission could recommend denial, or they could recommend approval with certain conditions. If the property is annexed today, it will basically split that road improvement district prior to the road being built, creating unique obligations for everyone.

Larson confirmed that the lots on both sides and across Amber Hill Road are not annexed. Peo concurred. The Heck property is the only property requesting to be annexed.

Proponents

1. Jennifer Heck, 8000 S. 80th Street, presented the request for annexation. The reason they are making this request is to require urban standard roads before any new development in the Grand Terrace area, which she and her husband believe to be in conformance with Comprehensive Plan Amendment No. 04011. Their goal is to supersede the road improvement district. Grand Terrace includes 485 apartment units which were not included in the earlier traffic studies. The traffic has been a major concern for the adjoining neighborhoods even before apartments became a part of the mix. She suggests that the current plan will more than double the traffic into the adjoining neighborhoods. She believes that the road improvement district is an attempt by the neighborhoods to get around annexation. The Hecks believe that an urban standard road system in Amber Hills Estates and the surrounding neighborhoods is the right thing to do. She and her husband do plan to subdivide their property in the future.

Strand wondered whether the neighbors of the Hecks would agree to join into the annexation request. Heck believes that most of the neighbors want the rural setting. 80th Street will get all of the traffic. She

and her husband want to subdivide in the future and they do not believe the asphalt will hold up. They only want to deal with road construction once. They were hoping that by annexing their property, the city could supersede the paving district and require urban standard roads. The Heck property represents about 450' linear frontage on 80th Street and 300' linear frontage on Amber Hill Road. They have tried to get the paving district to consider curb and gutter on portions, but they have not entertained that idea.

Esseks wondered whether the Hecks have estimated the difference in assessments. Heck believes that asphalt is about the same as concrete. She does not believe it will be a lot more.

There was no testimony in opposition.

Esseks inquired whether staff is still recommending deferral. Will explained that the staff had initially recommended deferral to give staff the opportunity to discuss the issues further. However, he suggested that the questions are probably now answered about as much as they will be. It is difficult to find that there is compliance with the annexation policy or enough of an advantage to the city to annex. He stated that the staff recommendation today would be to deny. This application will go forward to the City Council. The condition of approval is that there be an annexation agreement. Whatever action the Planning Commission takes, staff will work with the applicant to negotiate an annexation agreement. If we cannot come to terms, the applicant can then request that it go forward to the City Council in spite of not reaching an agreement. If the City Council were to deny, then they would have to come back and start the process again.

Marvin Krout, Director of Planning, added that one of the concerns was that if this property is annexed before the paving district goes in and the streets are paved, that will create a problem where we don't have a paved section of street as we had imagined on the Grand Terrace tract. This property is then faced with the situation of immediately paving these two street sections to an urban standard, costing two or three times as much. If this property owner comes in by himself, he doesn't have the opportunity to spread the costs out over both sides of the streets. It is a tremendous burden to try to pay for those costs as well as water and sewer costs down the road. One of the reasons he cannot recommend approval is that the city does not see the possibility that we are going to get paved sections if we annex this property. This is a great case lesson for why we should be cautious about approving acreages in an area unless it is planned in advance. What is most likely to happen if this property is not annexed, is that the paving district will go in with less than urban standard streets, and when that area eventually comes in, the chances are that the City Council would waive the standard and not require the urban standard streets, but would limit the number of lots that would be appropriate with the rural paved street. It is a difficult problem. If we move ahead now and annex this property, he sees problems for Grand Terrace, etc.

Response by the Applicant

Heck pointed out that the surrounding areas are curb and gutter, including the east side of 84th and Hwy 2, and what will be to the north will be all curb and gutter; she is also sure that the Jensen Park area is going to be all curb and gutter. In fact, she and her husband would be happy if the road improvement district would put in curb and gutter. They only plan to subdivide the bottom half of their property. They would like three entrances onto Amber Hill Road, but that cannot be done without curb and gutter. They do not want to have to reconstruct the roads in the future when they subdivide.

Esseks wondered about curb and gutter with the 8" of asphalt. Heck does not believe the road improvement district has entertained that idea. She does not know whether it would be acceptable for she and her husband to put in the curb and gutter themselves. Esseks thinks it might be a feasible compromise.

Larson inquired whether approval of the annexation by Planning Commission sets up an immediate obligation for the applicant to pave those two streets to city standards. Will stated that it does not. The Planning Commission action is a recommendation to the City Council. The City Council will need to decide and there needs to be an annexation agreement. Will agreed that annexation of the property does, however, require the applicant to pave the streets at their cost.

Heck reiterated that her big concern is the amount of traffic coming down 80th Street and Amber Hill Road. She does not believe that the 8" of asphalt that the road improvement district will construct is going to hold up.

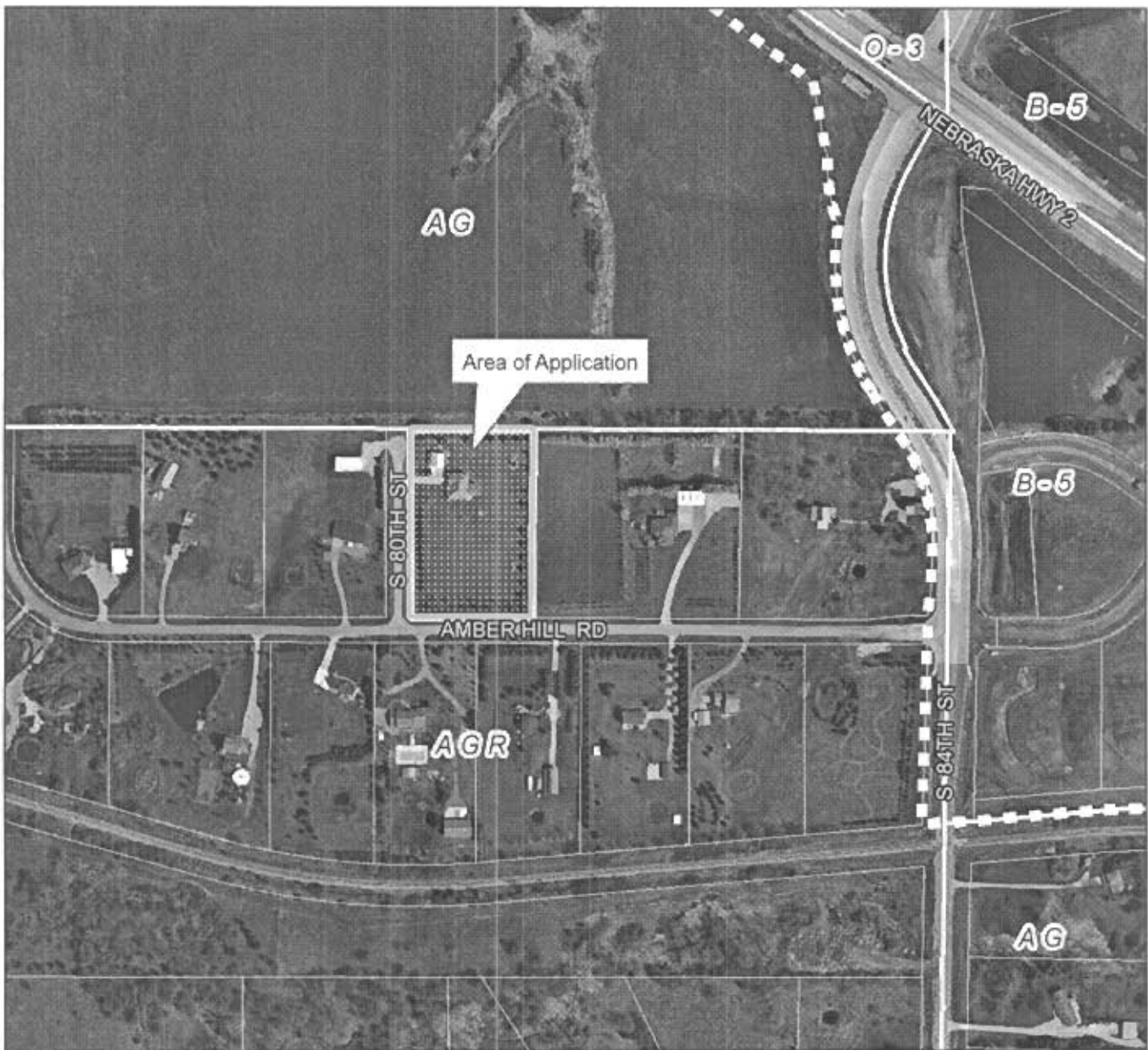
ACTION BY PLANNING COMMISSION:

May 24, 2006

Carroll moved to deny, seconded by Cornelius.

Strand strongly suggested that the applicants urge their neighbors in Amber Hill Estates to drive to Wilderness Ridge where they attempted to do county roads in a city subdivision. Most of the neighbors that did not get curb and gutter ended up with their yards and sprinkler systems all torn up. So the other part of Wilderness Ridge went with curb and gutter. She will vote to deny but urged that those neighbors look at what they are going to have to live with. She does not believe the City Council will approve the annexation without the other neighbors on board.

Motion to deny carried 9-0: Esseks, Cornelius, Carroll, Taylor, Sunderman, Strand, Larson, Krieser and Carlson voting 'yes'. This is a recommendation to the City Council.



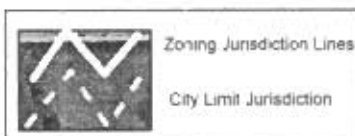
Annexation #06008
8000 S 80th Street
Zoning:

2005 aerial

Pine Lake Rd

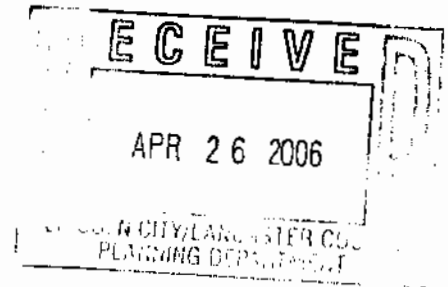
- R-1 to R-8 Residential District
- AG Agricultural District
- AGR Agricultural Residential District
- R-C Residential Conservation District
- O-1 Office District
- O-2 Suburban Office District
- O-3 Office Park District
- R-T Residential Transition District
- B-1 Local Business District
- B-2 Planned Neighborhood Business District
- B-3 Commercial District
- B-4 Lincoln Center Business District
- B-5 Planned Regional Business District
- H-1 Interstate Commercial District
- H-2 Highway Business District
- H-3 Highway Commercial District
- H-4 General Commercial District
- I-1 Industrial District
- I-2 Industrial Park District
- I-3 Employment Center District
- P Public Use District

One Square Mile
 Sec. 22 T9N R7E



April 25, 2006

James Heck
8000 South 80th Street
Lincoln, NE 68516



Marvin Krout
Director of Planning
Lincoln/Lancaster County Planning Department
555 South 10th Street
Lincoln, NE 68508

Mr. Krout,

We, James and Jennifer Heck live at 8000 South 80th Street our legal description is Amber Hill Estates Block 1 Lot 1. We are requesting Annexation of our lot and we would like to see Amber Hill Estates follow our lead. For the following reasons:

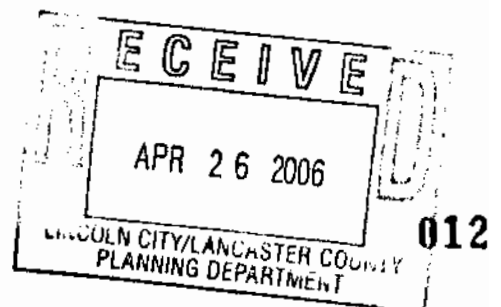
1. We agree with the city that an Urban Standard Road system needs to be in place to serve the new Grand Terrace Urban Development at 84th and hwy 2 which has doubled the number of units they plan to build from first Plot to the current Plot. The first plot shown had 236 units to build; now the developer has the approval to build 485 Units. Because of the newly approved apartments, which no one in our neighborhoods wanted The request for NO apartments has been one of our major density issues from the beginning conversations (March 2004) with the developer. All earlier traffic studies did not include apartments in this development; the traffic has been a major concern for the adjoining neighborhoods before apartments became a part of the mix.
2. For the first three phases of the Grand Terrace Development which will cover about Three Hundred Units (and about three plus years) they will only have a right-in right-out on 84th Street and access through Amber Hill Estates on Amber Hill Road and 80th Street that the Paving District plan to put in 8 inch asphalt that will be torn up by the construction traffic and eventually by being annexed and up grading to Urban Standards.
3. The Paving District is made up of three different neighborhoods Amber Hills Estates, Portsche Heights, Clarendon Hills. Amber Hill was forced into the paving district and has the biggest impact and out numbered in the decision process. I want to do what's best for our neighborhood and do it once and not have to deal with the roads construction again on my street. So I have no choice to apply for annexation unless the City Council up holds their vote on the Comprehensive Plan Amendment #04011. This supports the requirement of an

Urban-cross section of roads to be connected to the Grand Terrace Development prior to any new development.

4. We knew when we bought this property that it would be annexed some day, and we planned for a Future Urban Development. The time has come and my neighbors all got an idea from a fast talking attorney and low-end builder to get around annexation by creating a Paving District. We agree with the City and want to do the job once the right way with Urban Standard Road System in Amber Hills Estates.

Thank you for your consideration on this request.

James T. Heck
Jennifer J. Heck



We, James and Jennifer Heck live at 8000 South 80th Street our legal description is Amber Hill Estates Block 1 Lot 1. We are requesting Annexation of our lot and we would like to see Amber Hill Estates follow our lead. For the following reasons:

1. We hope this request will give you the opportunity to follow the Comprehensive Plan Amendment #04011 and require urban standard roads before any new development in the Grand Terrace area. Since you have no control until we are annexed we expect you to do the right thing and honor our request. So you can supercede the Paving District and do the right thing for our neighborhood and the City.
2. We agree with the city that an Urban Standard Road system needs to be in place to serve the new Grand Terrace Urban Development at 84th and hwy 2. The first plot shown had 236 units to build; now the developer has applied and received approval to build 485 Units which no one in our neighborhoods wanted or knew about. Having apartments in the development has been one of our major density issues from the beginning conversations (March 2004) with the developer. None of the earlier traffic studies included apartments in this development. The traffic has been a major concern for the adjoining neighborhoods even before apartments became a part of the mix. The number of units they plan to build from first Plot to the current Plot will more than double the traffic into the adjoining neighborhoods
3. For the first three phases of the Grand Terrace Development will cover about Three Hundred Units (and about three plus years) and they will only have a right-in right-out on 84th Street and access through Amber Hill Estates on Amber Hill Road and 80th Street that the Paving District plans to put in 8 inch asphalt that will be torn up by the construction traffic and new residents. Eventually in the near future we will be annexed and up grading to Urban Standards with more road construction and money.
4. The Paving District is made up of three different neighborhoods Amber Hills Estates, Portsche Heights, Clarendon Hills. Amber Hill was forced into the paving district by the County Board with pointless threats by Mr. Reirden and Mr. Katt about how Amber Hill would have a tough time creating their own paving district, which we had no intentions of doing. We want to do what's best for our neighborhood and do it once and not have to deal with the roads construction again on our street.
5. We knew when we bought this property that it would be annexed some day, and we planned for a Future Urban Development. That time has come and my neighbors all got an idea from a fast talking attorney and low-end builder to get around annexation by creating a Paving District. We agree with the City and want to do the job the right way with Urban Standard Road System in Amber Hills Estates and surrounding neighborhoods.

Thank you for your consideration on this request.

